



# KOPELMAN AND PAIGE, P.C.

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November 20, 2014

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Hon. Daniel Rivera  
Mayor of Lawrence  
City Hall, Room 309  
200 Common Street  
Lawrence, MA 01840

Hon. Modesto Maldonado  
President, Lawrence City Council  
City Hall  
City Council Office  
200 Common Street  
Lawrence, MA 01840

Re: Election Report

Dear Mayor Rivera and Council President Maldonado:

Mayor Rivera has requested a review of Election Day procedures following the conclusion of the 2014 State Primary and Election. To summarize my involvement in the election process, I was asked various questions by the City Clerk prior to and on the date of both the primary and the election. I was also present on November 4, 2014 at City Hall from approximately 6:00 p.m. until 10:15 p.m., and witnessed first-hand the manner in which the ballot boxes were returned from the precincts, and processed and secured at City Hall. I have also been consulted briefly about certain matters arising after the election. I have briefly reviewed, but was not consulted with respect to the content of, the training materials prepared by the City Clerk and Elections Department, and was informed of the training schedule just before the election. This report and my observations are therefore not the result of a formal investigation or a top-to-bottom review of the Elections Department.

As I have indicated in the past, both to the City Clerk and others, no election is perfect. There are thousands of pieces of paper to be handled, hundreds of voting machines and marking stations to manage, and significant numbers of persons hired by the City to work on an intermittent basis requiring training and management. In addition, there is the requirement for significant coordination between various City departments including police, public works and the City Clerk and Elections Department, as well as dozens of relevant laws and regulations to be addressed. The role of the City Clerk and Elections Department in managing all of these moving parts is significant and challenging. It is likely that observation of any election would lead to recommendations for improved procedures. In this instance, that is also the case. Based upon my observations, and my previous representation of the City in connection with the 2013 Mayoral recount, a thorough review

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and assessment of such procedures would likely provide recommendations for enhanced and more effective training as well as streamlined procedures specifically formulated to address the challenges facing the City.

In connection with the primary, I was formally contacted by the City Attorney's office and the City Clerk shortly before the election. Similarly, my involvement with the Clerk with regard to the November 4, 2014 State Election was also limited, starting only the Thursday before the election. Based upon this limited involvement, I have listed my observations and recommendations below.

### Poll Workers

1. Poll Worker List/Positions – A list of poll workers, with positions, was not readily available from the City Clerk and Elections Department as of the Thursday prior to the election, and was not finalized until approximately 4:00 on the Friday before the election.
2. Supplemental Poll Workers – To address a potential shortage of workers, the City Clerk and Elections Department sought to have appointed 15 so-called “supplemental” poll workers, including two bilingual poll workers, but did not have information readily available as to how many previously appointed poll workers were going to be unavailable.
3. Training – Nine approximately one-hour trainings for poll workers were conducted during the week immediately prior to the date of the election, and, I understand, two training sessions were conducted on Monday, November 3. It is unclear whether the City Clerk and Elections Department require training as a prerequisite for persons to serve as poll workers on election day. .

### Conduct of Election

1. Machine breakdown – Following a machine breakdown, a police officer was reported to have “maintained ballots” until the machine was fixed, and then the officer fed the ballots through the machine.
2. Voter on list referred to City Hall – A voter was sent from her polling place to City Hall to review her eligibility to vote. Limited research at City Hall evidenced the voter was on the list at that polling place. She was sent back to vote at the polling place, over her objections.
3. Questions were raised as to who may serve as an observer at the polls.
4. Complaints were received by the State Elections Division concerning the existence and location of polling place signage.

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5. Complaints were received by the State Elections Division about “ballot chain of custody issues”.
6. Complaints were received by the State Elections Division about a single poll worker accompanying a voter into the voting booth to “translate” a ballot.

**Closing Procedures**

1. Overstuffed Boxes – Ballots and other materials were placed in boxes preventing closure of boxes even though numbered seals were affixed.
2. Access to Boxes – Covers were placed on boxes, and seals were affixed, but access could still be gained to boxes without removing covers.
3. Materials Required by Law to be Returned Outside the Ballot Boxes were Inside Boxes – Voting lists, provisional ballot materials including affirmations and rosters, tally sheets and payroll information were sealed in with the ballots in most wards (except for A1, A2, B3, E1 and F4).
4. Materials Required to be Sealed – Voting lists, including affirmations of current and continuous residence, and voted and individual provisional ballots (which ballots were individually sealed) and other provisional ballot information, were not returned in sealed envelopes.
5. Supplies – Copious amounts of supplies were maintained in ballot boxes, including, in some cases, multiple vests, large numbers of Information for Voters booklets.
6. Past Practice – Election Department staff indicated these types of circumstances have previously occurred but no process was in place to publicly remedy the defects, and training for such purposes was obviously not successful.
7. City Hall Ballot Receipt Process – City Clerk not present when first wave of ballot boxes returned to City Hall, apparently due to need in particular ward for assistance closing at end of election. Bilingual Elections Coordinator allowed persons to come beyond the perimeter established by the Police Lieutenant between access to the vault and the public. Additionally, election results were released by the Bilingual Elections Coordinator prior to completion of all election-night closing procedures.

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## Post-Election

1. Absentee Ballots – Absentee ballots apparently received by City Hall, then delivered by Elections Department to wrong polling places and returned to City Hall; never counted on Election night.
2. Staffing – Paperwork required for payroll evidenced that a person worked all day as a poll worker who was not appointed by the City to the position or trained therefor

Without formally revisiting the election-related issues implicated by the recount in their entirety, I note that the condition of the ballot boxes at the recount was similar in that there were significant amounts of extraneous materials maintained in the boxes. Other issues included not sealing spoiled ballot envelopes, not clearly writing the word “spoiled” on spoiled ballots, and failure to properly secure or administer absentee ballots.

I note further that some of these same issues appeared to be of concern to the Secretary of the Commonwealth’s Elections Division in previous years. In 2006, the Secretary’s office did an investigation of the City’s Elections Department under the provisions of G.L. c.56, §60. In the order issued thereunder, the City was required to (1) provide mandatory training sessions for all poll workers at least one week prior to any election, (2) work with the Secretary’s office to schedule trainings for wardens who would then act as trainers for the remainder of the City’s poll workers, (3) encouraged to pay poll workers for attendance thereat, (4) provide, no later than August 15<sup>th</sup> of each year a list of poll workers, and wardens and their assigned locations, as well as the names of all bilingual poll workers and wardens and their locations, and (5) develop and provide a written plan for how the City will fill vacancies that may arise.

## Conclusions and Recommendations

These matters are, taken separately and together, significant, in my opinion.

1. Staffing - Failure to have a staffing plan for the polls well in advance of the election is obviously problematic. As the Clerk suggested, the week before the election is not the time to attempt to locate poll workers and make sure they are trained. As was required by the Secretary of the Commonwealth in 2006, in my opinion, the Clerk and Elections Department should have a schedule of workers and assignments established and confirmed several months prior to the election, with a specific plan developed to address any vacancies that may unexpectedly arise, including but not limited to appointment of “back up” poll workers who can act as “floaters”, available to work at any polling location as needed and directed by the City Clerk and Elections Department.

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2. Training - While the training for poll workers may be successful in various ways, in my opinion, more formal, step-by-step training materials should be prepared and explained to all poll workers. Such materials should also be available at the polls, with, for example, color coding, tabs, checklists, and other shortcuts for easy access to and use of the relevant information at the polls. While reliance on the Secretary of the Commonwealth's training materials is, of course, appropriate, it is generally useful to examine the City's processes and challenges and tailor those materials accordingly. Moreover, in light of the manner in which the ballot boxes were returned to City Hall on the night of the state election, the City Clerk and Elections Department must provide clerk and warden training focused more specifically on closing procedures. Further, where the law relative to elections is increasingly complicated, training for poll workers should be mandatory, in my opinion, and held over a series of weeks to ensure greatest participation by poll workers.

Training must also address matters such as signage, the so-called 150 foot rule, authority of the warden at the polling place, ability of observers to be present and the management of observers in the polling place, process for allowing inactive voters to vote, addressing challenges, provisional voting, process for determining voter eligibility, and more.

3. Machine Breakdown – When a machine breaks down such that it is unable to accept ballots electronically, in no event may ballots be provided to a police officer for “safe keeping” until the machine is fixed. Instead, those ballots must be cast by the voter, placed directly in the hand count bin and then counted manually at the end of the night. This process is not optional, in that there is no other way to ensure that the ballot cast belongs to the voter, and/or to protect the secretary of the ballot.
4. Voter Eligibility – Voters appearing on the voting list must be allowed to vote in the precinct in which they are listed, and should not be sent to City Hall to address eligibility issues unless the warden is unable to resolve the same at the polls. Instead, a warden with questions about the eligibility of a voter should offer the voter the opportunity to wait while the warden contacts the Elections Department for review of the voter’s eligibility. Being sent back and forth between City Hall and the polling place is frustrating to the voter, and undermines the public’s faith in the electoral process, particularly if the voter is, in fact, eligible to vote.
5. Absentee Ballots – The processing of absentee ballots was an issue at the recount, in that absentee ballots were discovered after the election that appeared to have been received timely and not counted. At this year’s State Election, several absentee ballots were again apparently received timely, delivered to the wrong polling place, and never counted on election night. In a close election, an issue such as the failure to count absentees received timely on the night of the election could be significant, particularly where it is extraordinarily difficult to ensure chain of custody.

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6. Ballot Boxes – Ballot boxes are required to be sealed at the polls after all the votes have been tallied. Compliance with that requirement is the single most important action to ensure protection of the election results and to secure the intent of the voters. In my opinion, therefore, failure to properly seal the ballot boxes exposes the election results to challenge for numerous reasons. For example, if a recount of the election had been requested, there would have been no way to demonstrate conclusively that no person had the ability to access the voted ballots. In fact, in this case, the ballot boxes did not remain sealed. In many cases, they could not be effectively sealed because there was overflow from the box itself. Moreover, in many cases, tally sheets, voting lists, payroll, and provisional ballot materials were located inside the ballot boxes.

I understood from the Elections Department staff reaction that this result was not unusual, and had occurred in the past. In fact, when ballot boxes were first received at City Hall, it appeared as if Elections Department staff intended that the opening and resealing of the boxes would take place in the vault, outside of the public view.

In the absence of the City Clerk, and where many of the required materials were located in the boxes, it was necessary to establish a process for retrieving necessary materials and to ensure that the boxes were properly sealed. In consultation with the Director of the State's Elections Division, Senior Clerk Reyes, the Lieutenant and I agreed on a public process to undertake the same, and to secure the ballot boxes thereafter.

It is difficult to understand, where all of the wardens and clerks were purportedly trained in election closing procedures, how the wardens would have believed it was acceptable to return the ballot boxes in that condition. Similarly, it is difficult to understand how, nearly uniformly, wardens allowed information to be placed in the ballot boxes, which, in theory, would have made such information unavailable for the retention period for the ballots, such as the vote tally and the provisional ballots and roster. The lack of such information would make it impossible for the City Clerk and Elections Department to finalize and report the election results, update its voter lists, and more.

To reiterate, the ballot boxes contained materials that did not require sealing, such as Information for Voters booklets, extra blank affirmations of continuous and current residence, multiple vests, etc. If such materials were returned separately to City Hall and the ballots were placed in the box in an organized manner, it is likely, in my opinion, that many of the boxes would have at least been able to close. Additionally, failure to seal the materials that required sealing, which action itself is inconsistent with law, could also jeopardize election results if the election is close. For example, if the spoiled ballot envelopes, voting lists, and provisional ballots are not properly sealed, such discrepancies can lead to challenges and undermine the finality of election results, as well as voter confidence in the election process.

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The City must consider whether to prioritize the acquisition of new ballot boxes that actually seal, preventing materials from being inserted or removed from the boxes. In my opinion, many of the ballot boxes currently being used could, even if the lids were properly closed, possibly be accessed without breaking the plastic seals. With respect to the immediately past election, in my opinion, particularly if there were issues with ballot boxes being overstuffed in the past, there needed to be significant training on applicable procedures, and a policy developed to ensure the integrity of the cast and uncast ballots returned from the polls.

Moreover, the process at City Hall for intake and processing of the ballot boxes and other election materials must also be carefully reviewed, compared to what is required by law, and revised to address the issues created and summarized above. It is essential, in my opinion, that the City's end-of-election night protocol, both at the polls and at City Hall, be reviewed, analyzed, and revised to include step by step instructions in this regard. Failure to do so will, in my opinion, expose the City to continued potential challenges to its elections.

For all of these reasons, I recommend that the City begin the process for undertaking a thorough review of all election-related processes, identify strengths and weaknesses, and develop formal protocols, including the following:

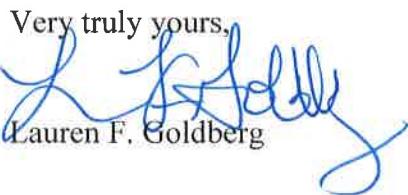
- (1) Identifying and recruiting poll workers.
- (2) Allocating poll workers using a system that leverages experience, so that more skilled poll workers are paired with less skilled poll workers, and further, ensuring that highly skilled workers are assigned to any wards where there tend to be questions as to voter eligibility and/or where there is high turnout.
- (3) Reviewing and updating training materials, with a significant focus on voter eligibility issues, provisional ballots, challenged ballots, inactive voters, observers rights and management strategies, end-of-night closing procedures and procedures for handling ballots during machine failures (including but not limited to recommendations from the Elections Division at the Secretary of State's office; reviewing materials from other cities and towns; reviewing Elections Division memoranda, training materials, and other communications), culminating in preparation of detailed written guidance.
- (4) Instituting on-going training protocols, including review of how rigorously wardens and clerks and other officials are trained, mandatory nature of training, and how training requirements affect eligibility for appointment and reappointment.
- (5) Reviewing pre-election set up, election day, and closing procedures, both at City Hall and ward by ward, so as to tailor any written materials to address matters of issue in that pose challenges for the City.

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- (6) Meeting with stakeholder groups, within and outside of City Hall, to assess staff and public concerns about the process and provide community outreach and education as needed and appropriate.

Please contact me with any further questions concerning this matter.

Very truly yours,  
  
Lauren F. Goldberg

LFG/man  
cc: City Council

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